

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE**

Robert Fields,

Plaintiff,

– against –

Capital Management Services, LP,

Defendant.

Index No.

VERIFIED COMPLAINT

Plaintiff ROBERT FIELDS, by and through his attorneys, Reznik Law Firm, PLLC, complaining of the Defendant, hereby alleges as follows:

1. This is an action for damages brought by an individual consumer for Defendant's breach of contract, violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, et seq. (hereinafter the "FDCPA"), and violations of New York's General Business Law (hereinafter the "NYGBL"). The FDCPA prohibits debt collectors from engaging in abusive, deceptive, and unfair collection practices. The NYGBL protects consumers from deceptive acts or practices in the conduct of any business.

PARTIES

2. Plaintiff, Robert Fields, is an adult residing in Glendale, AZ.
3. Plaintiff is a "consumer" as defined by 15 U.S.C. § 1692a(3) of the FDCPA.
4. Defendant Capital Management Services, LP is a business entity regularly engaged in the business of collecting debts in this State with its principal place of

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business located at 698 1/2 S Ogden St, Buffalo, NY 14206. The principal purpose of Defendant is the collection of debts using the mails and telephone, and Defendant regularly attempts to collect debts alleged to be due another.

5. Defendant is a "debt collector" as defined by 15 U.S.C. § 1692a(6) of the FDCPA.

FACTUAL ALLEGATIONS

6. Defendant attempted to collect a debt allegedly owed by Plaintiff relating to consumer purchases allegedly owed to Defendant Barclays Bank Delaware ("Barclays").
7. The debt at issue arises out of an alleged transaction which was primarily for personal, family or household purposes and falls within the definition of "debt" for purposes of 15 U.S.C. § 1692a(5).
8. On or about August 18, 2016, Plaintiff and Defendant, on behalf of Barclays, entered into a settlement agreement for Plaintiff's Barclays account ending in 8797. A copy of the settlement agreement is attached herein as Exhibit A.
9. Pursuant to the terms of the settlement, Plaintiff was required to four (4) monthly payments totaling \$1,179.00 to settle and close his Barclays account.
10. Thus, Defendant acknowledged in writing that it had agreed to a settlement with Plaintiff, in consideration of monthly payments which Plaintiff would be required to make.
11. Plaintiff via his debt settlement company, National Debt Relief ("NDR"), timely made the requisite payments.
12. However, Defendant accepted and cashed only three of the four payments. Proofs of these payments are attached herein as Exhibit B.

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13. Thereafter, on December 14, 2016, NDR contacted Defendant to resolve the payment discrepancy. A Capital Management representative explained that the account was recalled.
14. On December 20, 2016, NDR contacted Barclays. A Barclays representative named Marsha explained that Barclays would not honor the previous settlement agreement.
15. Defendant's reneging on the settlement agreement with Plaintiff constitutes a breach of contract.
16. Defendant knew or should have known that its actions violated the FDCPA. Additionally, Defendant could have taken the steps necessary to bring its actions within compliance with the FDCPA, but neglected to do so and failed to adequately review their actions to ensure compliance with said laws.
17. At all times pertinent hereto, Defendant was acting by and through its agents, servants and/or employees, who were acting within the scope and course of their employment, and under the direct supervision and control of the Defendant herein.
18. At all times pertinent hereto, the conduct of Defendant, as well as that of its agents, servants and/or employees, was malicious, intentional, willful, reckless, negligent and in wanton disregard for federal law and the rights of the Plaintiff herein.

FIRST CAUSE OF ACTION
(Breach of Contract)

19. Plaintiff reasserts and incorporates herein by reference all facts and allegations set forth above.

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20. Defendant acknowledged that it had agreed to a settlement with Plaintiff, in consideration of monthly payments which Plaintiff would be required to make.
21. Plaintiff timely made the requisite settlement payments, in accordance with the agreement.
22. However, Defendant accepted only three of the four settlement payments.
23. Defendant's reneging on the settlement agreement with Plaintiff constitutes a breach of contract.
24. As a result, Plaintiff has suffered actual and monetary damages.

SECOND CAUSE OF ACTION
(Fair Debt Collection Practices Act)

25. Plaintiff reasserts and incorporates herein by reference all facts and allegations set forth above.
26. The above contacts between Defendant and Plaintiff were "communications" relating to a "debt" as defined by 15 U.S.C. § 1692a(2) and 1692a(5) of the FDCPA.
27. FDCPA 15 U.S.C. § 1692e(10) prohibits any false, misleading, or deceptive representation or means in connection with the collection of a debt. Defendant violated this provision of the FDCPA by falsely and deceptively inducing Plaintiff to enter into a settlement agreement which it did not intend to adhere to and/or intended to breach.
28. As a result of the above violations of the FDCPA, Defendant is liable to Plaintiff for actual damages, statutory damages which can be up to \$1,000, attorney's fees and costs.

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THIRD CAUSE OF ACTION

(New York General Business Law: Deceptive Business Acts / Practices)

29. Plaintiff reasserts and incorporates herein by reference all facts and allegations set forth above.
30. NYGBL § 349 makes it unlawful for any person, firm, corporation, or association or agent or employee thereof to engage in deceptive acts or practices in the conduct of any business, trade, or commerce.
31. As a debt collector located and doing business in New York, Defendant is subject to the NYGBL.
32. Defendant violated the NYGBL by falsely and deceptively inducing Plaintiff to enter into a settlement agreement which it did not intend to adhere to and/or intended to breach.
33. As a result, Plaintiff has suffered actual damages, attorney fees and costs.

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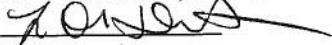
PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands that judgment in the sum of \$12,500 be entered against Defendant as follows:

- 1) That judgment be entered against Defendant for actual and monetary damages accrued by Plaintiff as a result of its breach of contract;
- 2) That judgment be entered against Defendant for actual damages pursuant to 15 U.S.C. § 1692k(a)(1);
- 3) That judgment be entered against Defendant for statutory damages pursuant to 15 U.S.C. § 1692k(a)(2)(A);
- 4) That the Court award costs and reasonable attorney's fees pursuant to 15 U.S.C. § 1692k(a)(3);
- 5) That judgment be entered against Defendant for actual damages pursuant to NYGBL § 349(h);
- 6) That the Court award costs and reasonable attorney's fees pursuant to NYGBL § 349(h); and
- 7) That the Court grant such other and further relief as may be just and proper.

Dated: July 12, 2017
New York, New York

Reznik Law Firm, PLLC

By: 
Lee Or Deutsch, Esq.
30 Wall Street, 8th Floor #741
New York, NY 10005
Tel (212) 537-9276
Fax (877) 366-4747
LeeOr@rezniklawfirm.com
Attorneys for Plaintiff

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VERIFICATION BY ATTORNEY

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

I, LEEOR DEUTSCH, an attorney duly admitted to practice law in the State of New York, hereby affirm under penalty of perjury:

I am an attorney associated with Reznik Law Firm, PLLC attorneys for ROBERT FIELDS, the plaintiff in the foregoing matter, with an office located at 30 Wall Street, 8th Floor #741, New York, NY 10005. I have read the foregoing Complaint and know the contents thereof, and that the same is true to my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters I believe them to be true.

The reason why this verification is made by deponent instead of Plaintiff is because Plaintiff is not within the County of New York which is the county where the deponent has her office.

Dated: July 12, 2017
New York, New York


LEEOR DEUTSCH

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698 1/2 South Ogden St
Buffalo, NY 14206
Tel: (716) 871-9050
Fax: (716) 512-6046

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Capital Management Services, LP

Robert W. Fields
[REDACTED]

August 18, 2016

Reference #: [REDACTED]
Account #: XXXXXXXXXXXXXXX [REDACTED]
Description: Barclaycard
Current Creditor: Barclays Bank Delaware
Balance: \$2945.75

Dear Robert Fields:

Capital Management Services, L.P. has been engaged by Barclays Bank Delaware, and is authorized to accept less than the full balance on the above mentioned account. The settlement offer shall be in the total amount of \$1179.00, the final payment due on 11/24/16. We are not obligated to renew this offer.

Installments	Amount	Due Date
1	\$120.00	08/26/16
2	\$120.00	09/26/16
3	\$120.00	10/26/16
4	\$819.00	11/24/16

You may submit any future payments to Capital Management Services, L.P., 698 1/2 South Ogden Street, Buffalo, NY 14206, or you may call 1-800-457-8220 for other convenient payment options.

Upon clearance of sufficient funds, our records will be updated to reflect that the above account has been satisfied. This letter is contingent on the clearance of all payments made towards the settlement. If any payments made as part of the settlement fail to clear, this offer will be null and void.

Once your account is settled for less than the full balance, Barclays Bank Delaware will send notification to the credit reporting agencies to reflect the settlement. Please allow Barclays Bank Delaware at least 30 days for the change to be updated on your credit bureau.

This settlement may have tax consequences. If you are uncertain of the tax consequences, consult a tax advisor.

Please see the additional page with this letter that may contain important information. We are required under state law to notify consumers of the following rights. This list does not contain a complete list of the rights consumers have under state and federal law.

This is an attempt to collect a debt; any information obtained will be used for that purpose. This communication is from a debt collector.

CMS - *STP DUE - Barclay ED

NYSCEF DOC. NO. 3

RECEIVED NYSCEF: 07/07/2017

Document type : Paid Item Check

01/17/2017 09:26 AM

Query Result Item #: 1

TO VERIFY AUTHENTICITY, SEE REVERSE SIDE FOR DESCRIPTION OF THE 11 SECURITY FEATURES

ROBERT FIELDS

COMERICA BANK - TEXAS

1037

8/26/2016

Pay To The Order Of Capital-Management Services, LP

\$120.00

One Hundred Twenty DOLLARS and NO CENTS

Payable in U.S. Funds

Memo: BARCLAYS BANK DELAWARE -

SIGNATURE NOT REQUIRED

Your Depositor has authorized the Check Payment via a Phone, Fax or Emailed authorization which is established as a legal Method of payment under the Uniform Commercial Code Title 1 Section 1-202, Title 3 Section 3-108. Payee has complied with FTC Sales Rule of 1995 by sending Depositor Check Authorization Notice.

GEORGIA CREDIT CARE, INC.
Capital Management

For Deposit Only

DO NOT WRITE, SIGN OR STAMP BELOW THIS LINE

Scanned box for
verification number

PAGE 129135C - 11 Security Features

- Occulard® strips are Class 21 compliant
- 171's "VOID" on front when dissolved
- Permanent black-ground highlights secure alterations
- Security warning is printed on front of check
- Alterations on back can be seen when check is held on an angle
- Deteriorative ink on watermark changes color when scratched with a coin
- Check verification number is part of the watermark
- Microtext print contains the Occulard name and is difficult to copy
- 24.00 gsm, coarse fibers (fibers of paper allow)
- Embossed metal area prints "VOID" when dry, faded
- Security features that are unique, visible, durable

Absence of any of these features may indicate alteration.

© 2004 Georgia Credit Care, Inc. All rights reserved.

Note Item Date	Tag Sequence Number	Account Number	Serial Number	Amount
No	No		1037	120.00
08/29/2016				

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NYSCEF DOC. NO. 3

RECEIVED NYSCEF: 07/07/2017

Document type : Paid Item Check

01/17/2017 09:26 AM

Query Result Item #: 1

CHECK FACE HAS A COLORED BACKGROUND ON WHITE PAPER

ROBERT FIELDS

COMERICA BANK - TEXAS

1038

9/26/2016

Pay To The Order Of Capital Management Services, L P.

\$120.00

One Hundred Twenty DOLLARS and NO CENTS

Payable in U.S. Funds

Memo: BARCLAYS BANK DELAWARE - [REDACTED]

SIGNATURE NOT REQUIRED

Your Depositor has authorized this Check Payment via a Phone, Fax or Emailed authorization which is established as a legal method of payment under the Uniform Commercial Code Title 1 Section 1-202, Title 3 Section 3-104. Payee has complied with FTC Sales Rule of 1993 by sending Depositor Check Authorization-Notice.


SECURITY FEATURE
 COPY-VOID PANTOGRAPH


Capital Management Services
 KNOW YOUR EMPLOYEE IDENTIFICATION
 For Deposit Only

 SIGNATURE
 ADDRESS
 SIGNATURE

Note Item Date	Tag Sequence Number	Account Number	Serial Number	Amount
No 09/28/2016	No [REDACTED]	[REDACTED]	1038	120.00

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NYSCEF DOC. NO. 3

RECEIVED NYSCEF: 07/07/2017

Document type : Paid Item Check

01/17/2017 09:25 AM

Query Result Item #: 1

CHECK FACE HAS A COLORED BACKGROUND ON WHITE PAPER

ROBERT FIELDS

COMERICA BANK - TEXAS

1039

10/26/2016

Pay To The Order Of Capital Management Services, L P

\$120.00

One Hundred Twenty DOLLARS and NO CENTS

Payable in U.S. Funds

Memo: BARCLAYS BANK DELAWARE -

SIGNATURE NOT REQUIRED

Your Depositor has authorized this Check Payment via a Phone, Fax or Emailed authorization which is established as a legal method of payment under the Uniform Commercial Code Title 1 Section 3-202, Title 3 Section 3-104. Payee has complied with FTC Sales Rule of 1995 by sending Depositor Check Authorization Notice.


SECURITY FEATURE
 COPY-VOID PANTOGRAPH


PREVENT FORGERY
 KNOW YOUR ENDORSER • REQUIRE IDENTIFICATION

For Deposit Only

SIGNATURE

ADDRESS

SIGNATURE

Note Item Date	Tag Sequence Number	Account Number	Serial Number	Amount
No 10/26/2016	No [REDACTED]	[REDACTED]	1039	120.00